

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNATHAN JAMES WISE,)	
)	
Petitioner,)	CASE NO. C05-1080JCC-JPD
)	
v.)	
)	
CAROL PORTER,)	REPORT AND RECOMMENDATION
)	
Respondent.)	
_____)	


Petitioner is a state prisoner who is currently incarcerated at the Washington Corrections Center in Shelton, Washington. He seeks relief under 28 U.S.C. § 2254 from his current confinement pursuant to a 1997 assault conviction in King County Superior Court. Respondent has filed an answer to the petition in which she argues that this Court lacks jurisdiction over the petition under 28 U.S.C. § 2244(b) because this Court has already denied one prior petition on the merits and petitioner has not obtained permission from the Ninth Circuit to file his current petition. Petitioner has filed a response to respondent's answer in which he notes that the instant petition is actually the third federal habeas petition he has filed in this Court, and he argues that because respondent did not oppose his second habeas petition on the grounds that it was "second or successive," she is barred from raising that argument here. Petitioner has also filed a

1 motion to amend his petition to add another constitutional claim and to provide additional case
2 law in support of his claims.

3 A review of this Court's records reveals that petitioner has, in fact, filed two previous
4 habeas petitions challenging his 1997 King County Superior Court assault conviction. His first
5 petition, filed under cause number C00-1710RSL, was denied without prejudice in May 2001, on
6 the grounds that petitioner had failed to state his claims with sufficient specificity. His second
7 petition, filed under cause number C01-1136RSL, was denied on the merits in April 2003.
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9 Because petitioner's first federal habeas petition was denied without prejudice, petitioner's
10 second petition was not deemed "second or successive." Petitioner's second petition, however,
11 was denied on the merits and, thus, the instant petition must be deemed successive. This Court is
12 without jurisdiction to consider a successive petition or motion until the Ninth Circuit Court of
13 Appeals has authorized its filing. 28 U.S.C. § 2244(b)(3)(A). Accordingly, this Court
14 recommends that this case be transferred to the Ninth Circuit Court of Appeals, in the interests of
15 justice, pursuant to 28 U.S.C. § 1631. This Court further recommends that petitioner's motion to
16 amend be stricken as moot. A proposed order accompanies this Report and Recommendation.
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18 DATED this 20th day of October, 2005.

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21 JAMES P. DONOHUE
22 United States Magistrate Judge
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